

TRUTH IN ANCIENT LEGAL PROCEDURE.

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Hard as it is to ascertain truth in the pleadings of contending parties in law courts, no court declines to lay claim to the credit of discovering truth and pronouncing its decision in favour of the plaintiff or the defendant. The procedure adopted to find out truth in the contention of parties appears to be what common sense suggests even to illiterate villagers. It is of frequent occurrence that, though illiterate, the headman of a village is called to decide a dispute between two villagers or a quarrel between two village-boys. The procedure usually adopted by the headman consists of (1) the statement (*bhâshâ*) of one of the disputants, (2) the reply of the other, (3) the inquiry he makes of witnesses as to the truth in their statements, and (4) the final verdict he pronounces in favour of either. The real facts of the case are not at all known to him. He bases his judgment on the facts placed before him either by the witnesses or by the disputants themselves. No headman of a village acting as a judge will ever fail to notice that while the witnesses are favourably inclined towards one or the other of the disputants, each of the latter makes representations in his own favour. The same appears to be the procedure followed in ancient Indian Law Courts, for in Smṛiti texts the procedure is described as consisting of the same four stages. If there were no hard and fast rules laid down regarding the forms of procedure to be followed in trying a civil suit or a criminal complaint, the person who would sit in judgment of a case before him would be at liberty of having his own procedure to find out truth. With rules of procedure, however, the case would surely take a different turn. The judge would have to confine his attention to the rules and arrive at a decision to which the procedure usually leads. The decision may or may not under the rules of procedure square with the real facts. It is more than probable that very often the decision arrived at after following the rules of procedure laid down proved quite contrary to real facts. A few ancient writers on Hindu Law seem to have been aware of this anomaly. Both Kautilya in his *Arthaśāstra*

and Pratāparudradeva in his *Sarasvatīvilāsa*, a treatise on Hindu Law, have given expression to this anomaly. The author of the *Sarasvatīvilāsa* attributes the verse descriptive of this anomaly to Haradatta, an ancient Smṛiti-writer. In this verse it is expressly stated that sometimes the decision arrived at following the rules of procedure might prove contrary to truth. The verse in question is found in no other Smṛiti text; nor is it referred to by any commentator on Smṛiti texts treating of Hindu law. A most distinguished savant of the Mysore University is of opinion that the divergence between the actual and the ascertained can be recognized only by an actual administrator of law and that it is beyond the cognition of such idealists as Smṛiti-writers, who appear from their writings to have taken no part in the administration of law. The case would be quite different with actual administrators of law like the author of the *Arthaśāstra* and the *Sarasvatīvilāsa*. It would be impossible for them to avoid cognition of the divergence between the actual and the ascertained. The disappointment felt by them in their attempt to elicit truth from trial and the pangs of conscience experienced in pronouncing a verdict on the varnished facts placed before them seem to have led the ancient writers on Hindu law to the confession that legal facts prevail over actual facts. The verses (Lines 6 and 7, P. 150, *Arthaśāstra*, Mysore O. L. Edn. and P. 58, *Sarasvatīvilāsa*, Mysore O. L. Edn.) run as follows:—

Dharmaścha Vyavahāraścha charitram rājaśāsanam
 Vivādārtha śchatuṣpādah paśchimah pūrvabādhakah
 Atra satya sthito dharmah vyavahārastu sākshishu
 Charitram sangrahe pumsām rāgnāmāgnā tu śāsanam.

Right, statement (of witnesses), life or conduct (of the disputant) and the king's verbal or written order constitute the four determinant limbs of a dispute. Of these that which is mentioned later prevails over that which is mentioned earlier. Here in truth lies right; vyavahāra or transaction lies in the statement of witnesses; *charitra* means the conduct or life of the disputants; and *śāśana* means the king's command.

The author of the *Sarasvatīvilāsa* raises objection to the rules laid down in the first verse that the statement of witnesses prevails over truth, that the customs of the accused or the defendant prevail over the evidence of witnesses, and that the king's order prevails over the former, and putting

the question, how it is that in spite of professed adherence to truth, it is set aside, he answers that this anomalous practice is of rare occurrence. The following examples are given in illustration of the anomaly :—

(1) A man of the royal family falls a victim to passion and commits adultery in the king's harem. When brought before the tribunal he denies it and out of compassion to the criminal and with a view to save his life, the witnesses also deny the fact. The judge pronounces a verdict "not guilty". This is a case in which the statement of witnesses is preferred to truth.

(2) A man belonging to a tribe who lives a promiscuous life is accused of adultery. Witnesses testify to it. Still on the strength of his pleading that adultery is no crime in his community, he is let off. This is a case in which preference is given to custom over truth.

(3) Sometimes approved custom is also set aside on the strength of the king's order. For example, it is a social custom observed by all that no king's servant should enter into the interior of the house of an honest citizen, and especially into the king's harem. In violation of this time-honoured custom, a burglar may make a forcible entry into the harem. Then the king may order one of his servants to go into the harem, and catch hold of the criminal. Here the king's servant violates the custom on the strength of the king's order.

From this it follows that *Dharma* or truth was very often at variance not only with aboriginal customs, but also with ever-changing social activity under monarchical guidance. According to the author of the *Sarasvatīvilāsa*, *Vyavahāra* means not merely the statement of witnesses, but also ordeals and other evidences described in detail in the *Dharmaśāstra* texts. Evidently the king's power was so enormous that he could set aside not only *Dharma* and the rules of the *Dharmaśāstra*, but also time-honoured customs.